

Jeremy Branch (State Bar No. 303240)
The Law Offices of Jeffrey Lohman, P.C.
4740 Green River Rd., Suite 310
Corona, Ca 92880
(866) 329-9217 ext. 1009
JeremyB@jlohman.com

Attorney for Plaintiff
ERIC CARTER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ERIC CARTER,

Plaintiffs,

v.

CHASE BANK USA, N.A.,

Defendant.

Case No.:

**PLAINTIFF'S COMPLAINT AND
DEMAND FOR JURY TRIAL
(Telephone Consumer Protection Act)**

ERIC CARTER (Plaintiff), by his attorney, alleges the following against
CHASE BANK USA, N.A., (Defendant):

1. Plaintiff brings this action on behalf of himself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone

1 Consumer Protection Act (hereinafter “TCPA”), 47 U.S.C. § 227 *et seq* and
2 in violation of California’s Rosenthal Fair Debt Collection Practices Act
3 (hereinafter “RFDCPA”), Ca Civ. Code § 1788.17.
4

5 JURISDICTION AND VENUE

- 6 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C.
7 §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740
8 (2012), holding that federal and state courts have concurrent jurisdiction over
9 private suits arising under the TCPA.
10
11 3. Venue is proper in the United States District Court for the Northern District
12 of California pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within
13 this District and a substantial part of the events or omissions giving rise to the
14 herein claims occurred, or a substantial part of property that is the subject of
15 the action is situated within this District.
16
17

18 PARTIES

- 19 4. Plaintiff is a natural person residing in Contra Costa County, in the city of
20 Danville, California.
21
22 5. Defendant is a Wilmington, Delaware corporation doing business in the State
23 of California.
24
25 6. At all times relevant to this Complaint, Defendant has acted through its agents
employees, officers, members, directors, heir, successors, assigns, principals,

trustees, sureties, subrogees, representatives and insurers.

FACTUAL ALLEGATIONS

7. Defendant is a “person” as defined by 47 U.S.C. § 153 (10).

8. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged debts incurred through purchases made on credit issued by Defendant.

9. Defendant placed collection calls to Plaintiff’s cellular telephone at phone number (530) 440-09XX.

10. Defendant places collection calls to Plaintiff from phone numbers including, but not limited to (210) 520-0146, (402) 220-4822, (847) 426-9203, (407) 732-2416, (847) 426-9145, (210) 520-2593, (847) 426-8085.

11. Per its prior business practices, Defendant’s calls were placed with an automated dialing system (“auto-dialer”).

12. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a) (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly owed by Plaintiff, ERIC CARTER.

13. Defendant’s calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

1 14. Defendant's calls were placed to a telephone number assigned to a cellular
2 telephone service for which Plaintiff incurs a charge for incoming calls
3 pursuant to 47 U.S.C. § 227(b)(1).

4 15. Defendant never received Plaintiff's "prior express consent" to receive calls
5 using an automatic telephone dialing system or an artificial or prerecorded
6 voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

7 16. On April 25, 2018, Plaintiff called into Defendant's company at phone
8 number (210) 520-0146. Plaintiff spoke with Defendant's male
9 representative "Ryan" and requested that Defendant cease calling Plaintiff's
10 cellular phone.
11

12 17. During the conversation, Plaintiff gave Defendant his social security number
13 to assist Defendant in accessing his account before asking Defendant to stop
14 calling his cell phone.
15

16 18. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his
17 cellular telephone and/or to receive Defendant's calls using an automatic
18 telephone dialing system in his conversation with Defendant's representative
19 on April 25, 2018.
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21 19. Despite Plaintiff's request to cease, Defendant placed another collection call
22 to Plaintiff on April 30, 2018.
23
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1 20.Despite Plaintiff's request that Defendant cease placing automated collection
2 calls, Defendant placed at least one hundred and ninety-seven (197)
3 automated calls to Plaintiff's cell phone.
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7 **FIRST CAUSE OF ACTION**
8 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
9 **PROTECTION ACT**
10 **47 U.S.C. § 227**

11 21.Plaintiff repeats and incorporates by reference into this cause of action the
12 allegations set forth above at Paragraphs 1-20.

13 22.The foregoing acts and omissions of Defendant constitute numerous and
14 multiple negligent violations of the TCPA, including but not limited to each
15 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.
16

17 23.As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,
18 Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and
19 every violation, pursuant to 47 U.S.C. §227(b)(3)(B).
20

21 24.Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in
22 the future.

23 **SECOND CAUSE OF ACTION**
24 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**
25 **CONSUMER PROTECTION ACT**
47 U.S.C. § 227 et. seq.

1 25.Plaintiff repeats and incorporates by reference into this cause of action the
2 allegations set forth above at Paragraphs 1-20.

3 26.The foregoing acts and omissions of Defendant constitute numerous and
4 multiple knowing and/or willful violations of the TCPA, including but not
5 limited to each and every one of the above cited provisions of 47 U.S.C. §
6 227 et seq.

7 27.As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
8 227 et seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages,
9 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47
10 U.S.C. § 227(b)(3)(C).

11 28.Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in
12 the future.

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16 **THIRD CAUSE OF ACTION**
17 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT**
18 **COLLECTION PRACTICES ACT**
19 **CA CIV CODE § 1788.17**

20 29.Plaintiff repeats and incorporates by reference into this cause of action the
21 allegations set forth above at Paragraphs 1-20.

22 30.Defendant violated the RFDCPA based on the following:

- 23 a. Defendant violated the §1788.17 of the RFDCPA by continuously
24 failing to comply with the statutory regulations contained within the
25 FDCPA, 15 U.S.C. § 1692 et seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, ERIC CARTER, respectfully requests judgment be entered against Defendant, CHASE BANK USA, N.A., for the following:

FIRST CAUSE OF ACTION

31. For statutory damages of \$500.00 multiplied by the number of negligent violations of the TCPA alleged herein (197); \$98,500.00;

32. Actual damages and compensatory damages according to proof at time of trial;

SECOND CAUSE OF ACTION

33. For statutory damages of \$1,500.00 multiplied by the number of knowing and/or willful violations of TCPA alleged herein (197); \$295,500.00;

34. Actual damages and compensatory damages according to proof at time of trial;

THIRD CAUSE OF ACTION

35. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt Collection Practices Act;

36. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788.30(b)*;

37. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ Code § 1788.30(c)*, and;

38. Actual damages and compensatory damages according to proof at time of trial;

ON ALL CAUSES OF ACTION

39. Actual damages and compensatory damages according to proof at time of trial;

40. Costs and reasonable attorneys' fees, and;

41. Any other relief that this Honorable Court deems appropriate.

JURY TRIAL DEMAND

42. Plaintiff demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED

Dated: February 21, 2019

By: /s/ Jeremy Branch
Attorney for Plaintiff ERIC CARTER